

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 GLYNDA B. GOMEZ,
Deputy Attorney General, State Bar No. 143448
3 Department of Justice
300 South Spring Street
4 Los Angeles, California 90013
Telephone: (213) 897-2542
5
6 Attorneys for Complainant

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8 BEFORE THE BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:) NO. AC-96-19
12 Joseph Thomas Heidelman)
440 W. Baseline Road) DEFAULT DECISION
13 Claremont, CA 91711)
14)
15 Accountancy Certificate No. 35386)
Respondent.)
16)

17
18 FINDINGS OF FACT

19 1. On or about December 9, 1996, Complainant Carol Sigmann, in her
20 official capacity as Executive Officer of the Board of Accountancy, Department
21 of Consumer Affairs, State of California ("Complainant"), filed an Accusation No.
22 AC-96-19 against JOSEPH THOMAS HEIDELMAN ("respondent") which is incorporated
23 herein by reference as though fully set forth herein and attached hereto as
24 Exhibit 1.

25 2. On or about January 2, 1997, Tom Buck, an employee of the Office
26 of the Attorney General, sent by certified mail, a copy of ACCUSATION No. AC-96-
27 19, Statement to Respondent, Government Code sections 11507.5, 11507.6, and
28 11507.7, the Notice of Defense form, and a Request for Discovery, to respondent's

1 address of record with the Board which was and is 440 W. Baseline Road,
2 Claremont, CA 91711. On or about January 3, 1997, S. Perez signed for the above
3 referenced certified mailing. The above-described service was effective as a
4 matter of law pursuant to the provisions of California Government Code section
5 11505, subdivision (c).

6 3. On July 30, 1982, the Board issued Certificate No. CPA 35386 to
7 respondent. The certificate expired on February 1, 1992 because the renewal fee,
8 required by Business and Professions Code Section 5070.5 was not paid and
9 evidence of compliance with continuing education regulations was not submitted.

10 4. Said certificate was in delinquent status and was not valid
11 during the period of February 1, 1992 through July 24, 1994. The certificate was
12 renewed effective July 25, 1994 upon receipt of the renewal fee and evidence of
13 compliance with the continuing education requirement. Said certificate was in
14 full force and effect from July 25, 1994 until February 1, 1996. Said
15 certificate expired on February 1, 1996 because the renewal fee required by
16 Business and Professions Code Section 5070.50 was not paid and evidence of
17 compliance with continuing education regulation was not submitted.

18 STATUTES AND REGULATIONS

19 5. California Business and Professions Code section 118 provides,
20 in pertinent part:

21 "(b) The suspension, expiration, or forfeiture by operation of law
22 of a license issued by a board in the department, or its suspension,
23 forfeiture, or cancellation by order of the board or by order of a court
24 of law, or its surrender without the written consent of the board, shall
25 not, during any period in which it may be renewed, restored, reissued, or
26 reinstated, deprive the board of its authority to institute or continue a
27 disciplinary proceeding against the licensee upon any ground provided by
28 law or to enter an order suspending or revoking the license or otherwise

1 taking disciplinary action against the license on any such ground."

2 6. California Government Code section 11506 provides, in pertinent
3 part:

4 "(b) The respondent shall be entitled to a hearing on the merits if
5 he files a notice of defense, and any such notice shall be deemed a
6 specific denial of all parts of the accusation not expressly admitted.
7 Failure to file such notice shall constitute a waiver of respondent's
8 right to a hearing, but the agency in its discretion may nevertheless
9 grant a hearing. ..."

10 7. Respondent failed to file a Notice of Defense within 15 days
11 after service upon him of ACCUSATION NO. AC-96-19 and therefore waived his right
12 to a hearing on the merits of ACCUSATION No. AC-96-19.

13 8. California Government Code section 11520 provides, in pertinent
14 part:

15 "(a) If the respondent fails to file a notice of defense or to
16 appear at the hearing, the agency may take action based upon the
17 respondent's express admissions or upon other evidence and affidavits may
18 be used as evidence without any notice to respondent; ..."

19 9. The Board of Accountancy, Department of Consumer Affairs, State
20 of California is authorized to revoke respondent's Certificate/license to
21 practice pursuant to the provisions of Section 5100 of the California Business
22 and Professions Code. Section 5100 provides that the Board may revoke, suspend
23 or refuse to renew any permit or certificate for unprofessional conduct.

24 10. Pursuant to its authority under Government Code section 11520,
25 and based upon the evidence before it, the Board finds that the allegations, and
26 each of them, contained in ACCUSATION No. AC-96-19 are true.

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1 DETERMINATION OF ISSUES

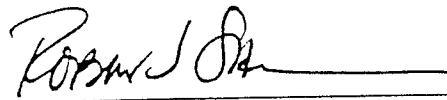
2 1. Respondent is subject to disciplinary action pursuant to sections
3 5100 and 5050 of the California Business and Professions Code by reason of the
4 above findings and cause for revocation has thereby been established.

5 ORDER OF THE BOARD

6 Certified Public Accountancy Certificate No. 35386, heretofore issued
7 to respondent JOSEPH THOMAS HEIDELMAN, is hereby revoked. An effective date
8 of MAY 3, 1997, has been assigned to this Order.

9 Pursuant to California Government Code section 11520, subdivision
10 (b), respondent is entitled to make any showing by way of mitigation; however,
11 such showing must be made in writing to the BOARD OF ACCOUNTANCY, DEPARTMENT OF
12 CONSUMER AFFAIRS prior to the effective date of this decision.

13 Made this 3rd day of APRIL, 1997.

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16 Robert J. Shackleton, President
17 Board of Accountancy
18 Department of Consumer Affairs
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15 Accountancy Certificate No. 35386)
Respondent.)
16)

17
18 COMES NOW Complainant Carol Sigmann, who as cause for disciplinary
19 action against Respondent Thomas Joseph Heidelman, alleges:

20 PARTIES

21 1. Complainant is the Executive Officer of the Board of Accountancy,
22 Department of Consumer Affairs, State of California ("Board") and makes and
23 files this accusation solely in her official capacity.

24 LICENSE STATUS

25 2. On or about July 30, 1982, the Board issued to Joseph Thomas
26 Heidelman (hereinafter referred to as the "respondent") Certified Public
27 Accountant certificate number CPA 35386. The certificate expired on February

1, 1992 because the renewal fee, required by Business and Professions Code Section 5070.5 was not paid and evidence of compliance with continuing education regulations was not submitted.

3. Said certificate was in delinquent status and was not valid during the period of February 1, 1992 through July 24, 1994. The certificate was renewed effective July 25, 1994 upon receipt of the renewal fee and evidence of compliance with the continuing education requirement. Said certificate was in full force and effect from July 25, 1995 until February 1, 1996. Said certificate expired on February 1, 1996 because the renewal fee required by Business and Professions Code Section 5070.50 was not paid and evidence of compliance with continuing education regulations was not submitted.

STATUTES AND REGULATIONS

4. Business and Professions Code section 5100 provides that the Board may revoke, suspend or refuse to renew any permit or certificate, or may censure the holder of a certificate or permit for unprofessional conduct, including but not limited to (a) conviction of a crime substantially related to the qualifications, functions and duties of a certified public accountant or a public accountant, and (f) willful violation of any rule or regulation promulgated by the board under the authority granted under this chapter.

5. Business and Professions Code section 5050 provides that no person shall engage in the practice of public accountancy in this State unless such a person is the holder of a valid permit to practice public accountancy issued by the board.

6. Business and Professions Code Section 490 provides that the Board may suspend or revoke the certificate of a certified public accountant if the holder of the permit stands convicted of a crime that substantially relates to the qualifications and duties of the profession for which the certificate was issued.

7. Title 16, California Code of Regulations section 99 provides that a crime is considered by the Board to be substantially related to the qualifications, functions, or the duties of a certified public accountant if to a substantial degree it evidences the present or potential unfitness of the holder to perform the function authorized by the certificate in a manner consistent with the public health, safety or welfare, including but not limited to those involving fiscal dishonesty, breach of fiduciary duty of any kind, dishonesty, fraud, gross negligence in the practice of public accountancy or in the performance of bookkeeping operation.

8. California Code of Regulations Section 52 and 52.1 (Board Rules 52 and 52.1) provide that a licensee's willful failure or refusal to respond to Board inquiries and/ or to appear in person before the administrative committee constitutes a violation of Business and Professions Code Section 5100(f).

CAUSES FOR DISCIPLINE

9. Respondent is subject to discipline under Business and Professions Code section 5100(f) in conjunction with section 5050 and 5055, by the reason of the following facts:

From the period of February 1, 1992 to July 24, 1994, respondent engaged in the practice of public accountancy and held out as a certified public accountant without a valid permit.

10. Respondent is subject to discipline by the Board pursuant to Business and Professions Code sections 5100(a) and 490 for conviction of substantially related crimes within the scope of Business and Professions Code section 5100(a) and 490 by reason of the following facts:

On August 30, 1994, respondent was convicted of a misdemeanor violation, Business and Professions Code Section 16240 (carrying

1 on any business trade, profession or calling for which a license
2 is required by any law of this state without a license) and
3 Business and Professions Code Section 5055 (holding oneself out as
4 a Certified Public Accountant without a valid license).

5 11. Respondent has subjected his license to discipline under Business
6 and Professions Code section 5100(f) in conjunction with California Code of
7 Regulations 52.1 (Board Rule 52.1) by reason of the following facts:

8 a. Respondent failed to appear in person before the
9 Administrative committee of the Board on June 22, 1995 and on
10 October 19, 1995.

11 b. Respondent did not respond to information requests from the
12 Board dated February 5, 1993, March 5, 1993, June 1, 1993,
13 September 13, 1993 and February 8, 1994.

14 c. Respondent failed to respond to two (2) inquiries from the
15 Board's cite and Fine program dated January 23, 1994 and February
16 14, 1994.

17 PRAYER

18 WHEREFORE, complainant requests that the Board hold a hearing on
19 the matters alleged herein, and that following said hearing, the Board issue a
20 decision:

- 21 1. Revoking or suspending Accountancy Certificate Number 35386,
22 heretofore issued to respondent Joseph Thomas Heidelberg;
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